IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 26534 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SALMABANU. W/O SANJAY ALIAS SAMIR RAHEMAN SHAIKH - Petitioner(s)
Versus
COMMISSIONER OF POLICE SURAT CITY & 2 - Respondent(s)

==========

Appearance :

MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
MR UR BHATT GOVERNMENT PLEADER for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 12/04/2007

ORAL JUDGMENT

1. By way of this petition, the detenu has

challenged the order of detention dated 6.10.2006 passed by the Commissioner of Police, Nanpura, Surat, under the provisions of sub-Section (1) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the 'PASA Act').

2. Learned advocate for the detenue has invited my attention to the order of detention dated 6.10.2006 by which detenue was arrested and sent to Sabarmati Central Jail, Ahmedabad, as well as to the grounds supplied therein. As the grounds of detention, one criminal case is shown as registered against the detenue which pertains to 'Prohibition'.

2.1 He has further submitted that in the order of detention it was stated that the detenue is carrying on anti-social activities and on the basis of one offence of 'bootlegging' registered against the detenue, he was termed as 'Bootlegger' within the meaning of Section 2 (b) of the P.A.S.A. Act. It was also stated in the

impugned order that as the said bootlegging activities of the detenue are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed against him.

2.2 He has submitted that on the basis of one criminal case registered against the detenue, it cannot be said that the activities of the detenue has become prejudicial to the maintenance of 'Public Order'. In support of his case, he has placed reliance on a decision of this Court passed in the case of ***"Sohanlal Surajram Visnoi Vs. State of Gujarat and Ors."*** reported in ***2004 (2) GLR 1051***, wherein it was held as under :

> "It may be noted that the contention advanced on behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in *toto*. **The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objection material and consideration that such incident or offence is likely to create disturbance of "Public Order". Emphasis**

> **is laid on "Public Order" and not on "Law and Order"**, which belongs to the realm of general law. After having taking into account the statutory definitions of the persons branded as "bootlegger" or "dangerous person" under the P.A.S.A. Act, and detailed factual matrix of each case, the solitary incident or instance in question in these petitions has not been shown or spelt out from the record as affecting the "Public Order" or likely to create public disturbance or prejudicial or adverse to the maintenance of "Public Order" and therefore, the continued detention of the detenu in each case has not been shown to be justifiable,....."

2.3 Hence, he has submitted that the impugned order deserves to be quashed and set aside.

3. On the contrary, learned A.G.P. for respondent – detaining Authority has supported the order of detention as well as grounds stated therein and has contended that the Authority has passed the impugned order after taking into consideration all the facts and circumstances of the case, and hence, no case is made out calling for interference of this Court.

4. As a result of hearing and perusal of the record, it appears that in this case the only

mate7rial is one criminal case registered against the detenue and on the basis of that it cannot be said that the activity of the detenue has become a threat to the maintenance of “public order' and 'public health'. The offence registered against the detenue pertains to prohibition to which I have already made reference in my earlier part of the judgment. Mere involvement of detenue in bootlegging activities may not amount to dangerous activity by detenue and mere mention of them unless supported by any evidence cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that the activity of the detenue is prejudicial to the maintenance of 'public order' and 'pubic health'.

4.1 I am, therefore, of the view that the detaining authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have considered factual and legal aspects emerging from the record and considered the rival submissions and the facts of the case and aslo

considered the judgment of this Court in the case of ***"Sohanlal Surajram Visnoi"*** (Supra). In view of the facts and circumstances of the present case and in view of the ratio laid down in the decision mentioned above, the order of detention cannot be sustained and it deserves to be quashed and set aside.

5. In the result, this petition is allowed. The order of detention dated 6.10.2006 passed by the Commissioner of Police, Surat is hereby quashed and set aside. The detenue is, therefore, ordered to be set at liberty forthwith, if he is not required in connection with any other case by the Authority. Rule is made absolute accordingly. Direct service is permitted.

(M.D. Shah, J.)

ynvyas